Under section 14 of the same Ordinance no order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except *inter alia* in the cases set out in section 16.

If section 16(c) of the Singapore Ordinance protects the member of a deceased statutory tenant's family residing on the premises then section 12(1)(i) of our Control of Rent Ordinance 1956, which is on substantially the same terms (save that instead of domestic premises, it refers to premises generally) would accord at least similar protection.

On a careful consideration of the reasons leading up to this decision in *Tan Khio Soei's* case, however I am inclined to the view that the decision therein applies not only to business premises, but to domestic premises as well *i.e.* in short to all buildings coming within the definition of "premises". Since the statutory tenant's right is a personal one ceasing on his death, the word "tenant" in section 12(1)(i) of the 1956 Ordinance can only mean "contractual" tenant. The definition of "tenant" in section 27(1) of the Ordinance does not apply.

Accordingly, I dismissed the appeal, appellant to pay costs here and in the court below.

Appeal dismissed.

Solicitors: *Joseph & Son; Atma Singh Gill & Gill.*

THONG PUCK YENG v. LUI TAT MAN

[A.C.J. (Ibrahim J.) August 28, 1974]
[Muar — Civil Appeal No. 8 of 1973]

Landlord and Tenant — Claim for possession — Allegation that rent was in arrears — Demand for rent — Whether should be made at premises — Control of Rent Act, 1966, s. 16(1).

This was an appeal against the decision of the learned magistrate giving vacant possession of the premises in question to the respondent. The learned magistrate had held that the rent of the premises was due on the 10th of the following month and that the respondent had demanded the rent after that date. It appeared that the demand was made not at the premises but at the appellant's adjoining medicine shop.

Held: (1) in the absence of a fixed period, the rent would be due at the end of each period of a periodic tenancy and the learned magistrate was wrong in holding, in the absence of any agreement to that effect, that the rent was due on the 10th of the following month. The erroneous finding of the learned magistrate on this point however could not upset his decision as a whole;

(2) demand for rent should, in the absence of agreement to the contrary, be made at the premises before rent could be said to be lawfully in arrear and as the demand in this case was not made at the premises and there was no agreement for demand elsewhere, the rent was not lawfully in arrears, and the learned magistrate was wrong in deciding that the notice to quit was good in law.

Cases referred to:-

(1) *Penang Motors (1950) Ltd.* v. *Suah Motors* [1959] M.L.J. 133.

(2) *Chop Lean Yak* v. *Ng Ah Hee* [1953] M.L.J. 6.

CIVIL APPEAL.

Elyas Majeed for the appellant.

F. H. D'Cruz for the respondent.

Ibrahim J.: This is an appeal against the whole of the decision of the learned Magistrate who on 3rd April 1973 ordered the appellant (defendant/tenant) to quit and deliver up to the respondent (plaintiff/landlord) vacant possession of the premises known as No. 5 Jalan Leong Yong, Segamat, Johore, such delivery to be effected within 3 months from the date of the Order, etc.

The respondent had based his claim on the following grounds under section 16(1) of the Control of Rent Act, 1966: —

(1) The rent lawfully due was in arrear for 14 days or upwards (as per section 16(1)(a)).

(2) Neither the tenant nor any member of his family was personally in occupation (as per section 16(1)(i)).

(3) The tenant, in breach of the tenancy agreement, was using the premises for purposes other than those for which it had been let (as per section 16(1)(l)).

The learned Magistrate decided that the respondent had failed in his claim on grounds (2) and (3) but had succeeded on ground (1).

The premises were originally let out by the respondent to the appellant's father many years ago. There was no agreement in respect of the time for payment of the monthly rent but the appellant's father used to pay it on or about the 1st of each month. When the appellant's father died more than 20 years ago the appellant took over the tenancy and though there was also no agreement in respect thereof he always paid the monthly rent late, usually on the 16th/17th of the following month and sometimes even later than that. On 4th April 1972 the respondent's solicitors sent a Notice to Quit to the appellant for non payment of the February and March 1972 rents at the rate of $110 per month allegedly in arrears. On 6th April 1972 the appellant sent a Money Order for $220 to the respondent. On the respondent's instructions his solicitors returned the Money Order to the appellant on 8th April 1972.

According to the respondent the monthly rent should have been paid on or about the 1st of the following month and that though he had twice demanded for the February 1972 rent in March 1972 and also twice for the March 1972 rent the appellant had not paid them. He had never agreed with the appellant that payment could be made late and he had at times told the appellant not to pay it late.

The appellant alleged that because of the practice whereby the monthly rent was usually paid and accepted on the 16th/17th of the following month it only became due on those dates. He also alleged that the respondent had never come to the premises or anywhere else to demand the rents. It was contended that the Notice to Quit was therefore bad in law.

On the evidence before him the learned Magistrate found that:

(1) the monthly rent was due on the 10th of the following month, *i.e.* February 1972 rent was due on the 10th of March 1972.
and

(2) the February 1972 rent had been demanded between the 10th and 18th March.

On the basis of those findings he decided that the Notice to Quit was good in law insofar as the February 1972 (but not March 1972) rent was concerned.

It is contended in this appeal that the learned Magistrate was wrong in finding that the February 1972 rent was due on 10th March 1972. In this connection the learned Magistrate in his Grounds of Judgment said:

"The fact that the plaintiff occasionally indulged the defendant in accepting the rent 2 months late does not mean that it should be regarded as evidencing a practice amounting to a variation of the agreed term as to the date of payment (as per *Bui Din Lan* v. *Sim Kim Eng* [1951] M.L.J. 156).

Allowing that some laxity was exercised in favour of the defendant in view of his friendly relations with the plaintiff at the outset, I make a finding of fact that the date the rent becomes due is the *tenth* day of the month following the month for which the rent is claimed for example for February, the date of payment would be the 10th March."

The learned Magistrate's finding that the due date was the 10th of the following month merely because some laxity should be allowed in view of the parties' friendly relations is purely arbitrary and unreasonable and as there was no agreement at all in respect thereof he should have found, as contended by the respondent, that the due date was the 1st of the following month, *i.e.* 1st March 1972 for the February 1972 rent. In *Hill and Redman's Law of Landlord and Tenant*, 15th Edition, at page 333 it is stated as follows:

"204. When and by whom rent is payable. — The reddendum fixes the periods when the rent is to be paid. If no periods are fixed, a rent reserved generally will be payable yearly, when the tenancy is for a term of years certain, and *at the end of each period of a periodic tenancy.*" (My italics).

The learned Magistrate's erroneous finding on this however could not upset his decision as a whole.

Another ground of appeal is that the learned Magistrate was wrong in finding that demand for the February rent was made between the 10th and 18th of March 1972 without giving any reason whatsoever for so finding. It is submitted by counsel for the respondent that since demand had not been specifically raised as an issue in the Statement of Defence it cannot be raised in this appeal. I do not agree. Paragraph 3 of the Statement of Claim averred that the appellant was in arrears of rents for two months and as paragraph 2 of the Statement of Defence had denied this and paragraph 3 thereof had averred that the rents were not lawfully in arrears and that the Notice to Quit was bad in law it was in my view incumbent upon the respondent to establish that the rents were lawfully in arrears and that the Notice to Quit was good in law.

In this connection the learned Magistrate in his Grounds of Judgment said:

"What is the position regarding the February rent? It became due on 10th March. Any demand made between 10th March, i.e. the due date, and 18th March, i.e. 14 days prior to the date of the Notice to Quit, would be a good demand for the purpose of serving a notice to quit.

Was such a demand made?

Bearing in mind that the plaintiff and the defendant are next door neighbours, I find, on a balance of probabilities, that such a demand *was* made."

The respondent had said that sometimes the appellant was even two months late in payment of the monthly rent and as the Notice to Quit dated 4th April 1972 was issued in respect of both February and March 1972 rents I consider it improbable that any demand was made at all in March for February 1972 rent. Even assuming that demands had been made there is no evidence to show that they had been made during the period specified by the learned Magistrate. The respondent himself had not said when he made those demands in March 1972. Apparently the learned Magistrate had arbitrarily fixed that period merely because he had found that the 10th was the due date and that the 18th was 14 days prior to the date of the Notice to Quit. What is more damaging to the respondent's case is that in his evidence he had said that he made those demands, not at the premises, but at the appellant's adjoining medicine shop No. 5A. As is shown in the judgments of Rigby J. in *Penang Motors (1950) Ltd.* v. *Suah Motors*[1] and Spenser Wilkinson J. in *Chop Lean Yak* v. *Ng Ah Hee*[2] such demand must be made not only 14 days or more before the date of the service of the Notice to Quit but must also be made at the premises before the rent could be said to be lawfully in arrear — unless of course there is an agreement for the payment of the rent elsewhere. There was no such agreement in this case. The learned Magistrate was therefore wrong in deciding that the Notice to Quit was good in law.

In the event I would allow this appeal with costs here and in the court below. The orders made by the learned Magistrate are set aside.

Appeal allowed.

Solicitors: *Elyas Majeed & Co.; Tay Leong Siak & Co.*

SUTHON KAVSONTHI v. PUBLIC PROSECUTOR

[A.Cr.J. (Ibrahim J.) August 30, 1974]
[Malacca — Criminal Appeal No. 3 of 1974]

Customs and Excise — Charge of importing prohibited goods — Whether necessary to prove knowledge that goods are prohibited — Mens rea — Customs Act, 1967, ss. 2, 45, 135.

The appellant had been convicted of the offence of importing prohibited goods to wit rice. The goods were found on a vessel which had arrived at the Port of Melaka. In his defence the appellant had alleged that the rice was *bona fide* in transit and that he did not know that a licence was required for bringing it into the Federation. The learned President of the Sessions Court rejected the plea that the goods were in transit and also held that "knowledge" was not relevant to the offence under section 135 of the Customs Act.

Held: (1) on the facts the learned President was justified in holding that the goods were not *bona fide* in transit;

(2) the learned President was wrong in holding that guilty knowledge was not relevant but on the facts before him the learned President would not have accepted on a balance of probabilities the appellant's story that he did not know that a licence was required for bringing the rice into the Federation, therefore the appeal must be dismissed.

Cases referred to:-

(1) *Pang Po & Anor.* v. *Public Prosecutor* [1962] M.L.J. 294, 295.

(2) *Ng Eng Kooi & Anor.* v. *Public Prosecutor* [1970] 1 M.L.J. 267.

(3) *Sherras* v. *De Rutzen* [1895] 1 Q.B. 918.